

Chapter 12

Privacy and Accountability of Public Figures

Despina A. Tziola

Aristotle University of Thessaloniki, Greece

ABSTRACT

Privacy uses the theory of natural rights and generally responds to new information and communication technologies. In North America, Samuel D. Warren and Louis D. Brandeis wrote that privacy is the “right to be let alone” (Warren & Brandeis, 1890) and focuses on protecting individuals. This citation was a response to recent technological developments, such as photography, and sensationalist journalism, also known as yellow journalism. Warren and Brandeis declared that information which was previously hidden and private could now be “shouted from the rooftops.” But whether the right to privacy may be limited in the case of public figures and whether public figures are accountable for their actions is up for debate. This issue is explored in this chapter through court decisions that occupied the public.

1. INTRODUCTION

Privacy is the ability of an individual or group to seclude themselves or information about themselves and thereby reveal themselves selectively. The boundaries and content of what is considered private differ among cultures and individuals, but share basic common themes. Privacy is sometimes related to anonymity, the wish to remain unnoticed or unidentified in the public realm (Yael, 2005). When something is private to a person, it usually means there is something within them that is considered inherently special or personally sensitive. The degree to which private information is exposed therefore depends on how the public will receive

this information, which differs between places and over time. Privacy partially intersects security, including for instance the concepts of appropriate use, as well as protection of information. Privacy may also take the form of bodily integrity.

The right not to be subjected to unsanctioned invasion of privacy by the government, corporations or individuals is part of many countries' privacy laws, and in some cases, constitutions. Almost all countries have laws which in some way limit privacy; an example of this would be law concerning taxation, which normally requires the sharing of information about personal income or earnings. In some countries individual privacy may conflict with freedom of speech laws

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and some laws may require public disclosure of information which would be considered private in other countries and cultures. Privacy may be voluntarily sacrificed, normally in exchange for perceived benefits and very often with specific dangers and losses, although this is a very strategic view of human relationships. Academics who are economists, evolutionary theorists, and research psychologists describe revealing privacy as a 'voluntary sacrifice', for instance by willing participants in sweepstakes or competitions. In the business world, a person may volunteer personal details (often for advertising purposes) in order to gamble on winning a prize. Personal information which is voluntarily shared but subsequently stolen or misused can lead to identity theft.

Privacy, as the term is generally understood in the West, is not a universal concept and remained virtually unknown in some cultures until recent times. Most cultures, however, recognize the ability of individuals to withhold certain parts of their personal information from wider society.

2. DEFINITION OF RIGHT TO PRIVACY

In recent years there have been only few attempts to clearly and precisely define a "right to privacy." Some experts assert that in fact the right to privacy "should not be defined as a separate legal right" at all. By their reasoning, existing laws relating to privacy in general should be sufficient. Other experts, such as Dean Prosser, have attempted, but failed, to find a "common ground" between the leading kinds of privacy cases in the court system, at least to formulate a definition. It has therefore proposed a working definition for a "right to privacy":

"The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts

in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose".

Alan Westin believes that new technologies alter the balance between privacy and disclosure, and that privacy rights may limit government surveillance to protect democratic processes. Westin defines privacy as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others". Westin describes four states of privacy: solitude, intimacy, anonymity, reserve. These states must balance participation against norms:

Each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of himself to others, in light of the environmental conditions and social norms set by the society in which he lives.

Under liberal democratic systems, privacy creates a space separate from political life, and allows personal autonomy, while ensuring democratic freedoms of association and expression.

David Flaherty believes networked computer databases pose threats to privacy. He develops 'data protection' as an aspect of privacy, which involves "the collection, use, and dissemination of personal information" (Flaherty, 1989). This concept forms the foundation for fair information practices used by governments globally. Flaherty forwards an idea of privacy as information control, "[i]ndividuals want to be left alone and to exercise some control over how information about them is used".

Richard Posner and Lawrence Lessig focus on the economic aspects of personal information control. Posner criticizes privacy for concealing information, which reduces market efficiency (Posner, 1978). For Posner, employment is selling oneself in the labour market, which he believes is like selling a product. Any 'defect' in the 'product' that is not reported is fraud. For Lessig, privacy breaches online can be regulated through code

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